

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 98-4774

VICTOR DESHAWN BANKS,
Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
N. Carlton Tilley, Jr., District Judge.
(CR-98-40)

Submitted: May 28, 1999

Decided: September 22, 1999

Before WILKINS, NIEMEYER, and TRAXLER,
Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Thomas N. Cochran, Assistant Federal Public Defender, Greensboro,
North Carolina, for Appellant. Walter C. Holton, Jr., United States
Attorney, Michael F. Joseph, Assistant United States Attorney, Jenni-
fer Ann Paisner, Third-Year Law Student, Greensboro, North Caro-
lina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Victor Deshawn Banks pled guilty to possession of cocaine base with the intent to distribute in violation of 21 U.S.C. § 841(a) (1994). He now appeals his sentence, arguing that the district court mistakenly believed itself to be without the authority to depart below the guideline range on account of an unjustified sentencing disparity. We dismiss.

Where the district court recognizes that it has the authority to grant a motion for downward departure, its refusal to do so is not reviewable. See United States v. Bayerle, 898 F.2d 28, 29-31 (4th Cir. 1990). Here, although the district court stated that it did not believe that it had the authority to depart on the basis sought by Banks, it also stated that even if it had the authority, it would not have departed in Banks' case. Because the district court made this alternative finding, we are without jurisdiction to review the district court's refusal to depart. We have considered Banks' arguments to the contrary, and find them unavailing. Accordingly, we dismiss for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED